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LONG ISLAND OFFICE

JJD:MEM
F. #2015R00640

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN THE MATTER OF AN APPLICATION FOR SEARCH WARRANTS FOR THE PREMISES KNOWN AND DESCRIBED AS:

(1) SAMSUNG MODEL SM-G386T1 CELLULAR TELEPHONE WITH "SW: G386T1UVU1ANH3; AND 354897062958195" TYPED ABOVE BARCODE ON THE DEVICE; AND

(2) KYOCERA, MODEL S1360 CELLULAR TELEPHONE, WITH "DEC: 268 435 462 511 676 660" AND "HEX: A00 000 41B 22B F4" TYPED BELOW THE BARCODE ON THE DEVICE

**SUBMITTED UNDER SEAL**

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SEARCH WARRANTS

MJ 15- 556

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EASTERN DISTRICT OF NEW YORK, SS:

Edward Martin, being duly sworn, deposes and states that he is a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), duly appointed according to law and acting as such.

Upon information and belief, there is probable cause to believe that there is located in THE PREMISES KNOWN AND DESCRIBED AS:

(1) SAMSUNG MODEL SM-G386T1 CELLULAR TELEPHONE WITH "SW: G386T1UVU1ANH3; AND 354897062958195" TYPED ABOVE BARCODE ON THE DEVICE ("DEVICE 1"); and

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(2) KYOCERA, MODEL S1360 CELLULAR TELEPHONE, WITH "DEC: 268 435 462 511 676 660" AND "HEX: A00 000 41B 22B F4" TYPED BELOW THE BARCODE ON THE DEVICE ("DEVICE 2")

(collectively, DEVICE 1 and DEVICE 2 are referenced herein as the "SUBJECT DEVICES"), further described in Attachment A, the things described in Attachment B, which constitute evidence, fruits and instrumentalities of a conspiracy to interfere with commerce by threats of violence, in violation of Title 18, United States Code, Section 1951, and illegal use and possession of a firearm, in violation of Title 18, United States Code, Section 924(c).

The source of your deponent's information and the grounds for his belief are as follows:[1]

1. I am a Special Agent with the ATF, and I have been employed by the ATF for approximately six months. Prior to being an ATF Special Agent, I was a Special Agent with the Naval Criminal Investigative Services for over four years. I am responsible for conducting and assisting in investigations into the activities of individuals and criminal groups responsible for robberies, possession of firearms, and firearms trafficking. These investigations are conducted both in an undercover and overt capacity. I have participated in investigations involving search warrants and arrest warrants. As a result of my training and experience, I am familiar with the techniques and methods of operation used by individuals

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[1] Because this affidavit is submitted for the limited purpose of establishing probable cause for the search warrants, I have not set forth each and every fact learned during the course of the investigation.

involved in criminal activity to conceal their activities from detection by law enforcement authorities.

2. I have personally participated in the investigation of the offenses discussed below. I am familiar with the facts and circumstances of this investigation from: (a) my personal participation in this investigation, (b) reports made to me by other law enforcement authorities, (c) information obtained from confidential sources of information, (d) interviews with witnesses, and (e) review of clandestine audio recordings.

3. The ATF is investigating an unlawful conspiracy to interfere with commerce by threats of violence and the illegal possession of a firearm, in violation of Title 18, United States Code, Section 1951 and possession of a firearm, in violation of Title 18, United States Code, Section 924(c).

## I. BACKGROUND

4. The SUBJECT DEVICES are currently in the custody of the ATF. As set forth more fully below, DEVICE 1 and DEVICE 2 were recovered from DASHAWN POTTER ("POTTER") upon his arrest on May 11, 2015.

5. On April 8, 2015, at approximately 7:20 p.m., the ATF met with a confidential informant (hereinafter , the "CI")[2], who informed the ATF that POTTER was planning an armed robbery of a warehouse. The CI placed multiple phone calls, all of which were recorded, to POTTER using the number (631) 383-8811. A meeting between the CI

[2] The information provided by the CI has proven to be reliable and has been corroborated by other sources of information, including audio recordings generated by the CI, under the direction of law enforcement officers, review of law enforcement databases to identify individuals described by the CI, and physical surveillance of the locations described by the CI.

and POTTER was arranged for later on in the evening. The CI was subsequently outfitted with an inconspicuous audio recording device. At approximately 8:23 p.m., the CI drove to 60 Fredrick Avenue, North Bay Shore, New York and picked up POTTER. At approximately 8:40 p.m. the CI drove POTTER to the vicinity of 19 Scott Avenue, Deer Park, New York. During the drive POTTER detailed to the CI, POTTER's plan to conduct an armed robbery of a warehouse containing various retail clothing and apparel, including high-end sneakers. POTTER asked the CI to be the driver for the robbery and POTTER also stated that he wanted to use additional co-conspirators, referencing the help of an individual POTTER identified as "JJ" and an "inside man" later identified as TYRONE ROCHFORD.

6. The CI and POTTER arrived at the vicinity of 19 Scott Avenue, Deer Park, New York at approximately 9:00 p.m. Upon arrival TYRONE ROCHFORD ("ROCHFORD") approached and entered the vehicle driven by the CI. ROCHFORD stated that he was employed at a warehouse located at 100 Inip Drive, Inwood, New York (the "Target Location"). ROCHFORD stated that his knowledge of the Target Location would assist POTTER and the CI in conducting an armed robbery of the Target Location.

7. On April 9, 2015, the CI, while being recorded, contacted POTTER by dialing (631) 383-8811 and arranged a meeting. The CI was equipped with an audio recording device for the meeting. At approximately 8:22 p.m., the CI picked up POTTER at 60 Frederick Avenue, North Bay Shore, New York. The CI and POTTER drove to the vicinity of the Target Location. During the drive, POTTER detailed POTTER's plans to commit an armed robbery at the Target Location, again referencing the help of "JJ".

8. The CI and POTTER arrived at the Target Location at approximately 9:12 p.m. POTTER then placed a call to ROCHFORD and had a detailed discussion

involving the layout of the Target Location, including entry points to be used during the planned armed robbery. At approximately 9:18 p.m., the CI and POTTER left the Target Location and began to drive back to 60 Frederick Avenue, North Bay Shore, New York. During the drive POTTER continued to discuss robbing the Target Location. POTTER's discussion included the use of a van which would be equipped with fake license plates to travel to and from the Target Location on the day of the robbery.

9. POTTER was arrested on May 11, 2015 after an arrest warrant was issued by the Honorable Steven I. Locke, pursuant to an indictment returned by a grand jury in the Eastern District of New York charging him with Hobbs Act Robbery Conspiracy, in violation of Title 18, United States Code, Section 1951(a). At the time of POTTER's arrest, POTTER informed the ATF that he had a firearm inside his residence and he consented to the search of his residence. During the subsequent search, the ATF recovered a .25 caliber, Lorcin Engineering, semi-automatic pistol. At the time of POTTER's arrest, the SUBJECT DEVICES were observed on the bed and dresser in the room where the ATF arrested POTTER. POTTER identified both SUBJECT DEVICES as his property.

10. On June 11, 2015, POTTER was arraigned on a superseding indictment which added the charge of Possessing a Firearm During a Crime of Violence, in violation of Title 18, United States Code, Section 924(c)(1)(A)(i).

## II. TECHNICAL TERMS

11. Based on my training and experience, I use the following technical terms to convey the following meanings:

a. Wireless telephone (or mobile or cellular telephone): A handheld wireless device used for voice and data communication through radio signals.

These telephones send signals through networks of transmitter/receivers, enabling communication with other wireless telephones or traditional "land line" telephones. A wireless telephone usually contains a "call log," which records the telephone number, date, and time of calls made to and from the phone. In addition to enabling voice communications, wireless telephones offer a broad range of capabilities. These capabilities include: storing names and phone numbers in electronic "address books;" sending, receiving and storing text messages and email; taking, sending, receiving and storing still photographs and video; storing and playing back audio files; storing dates, appointments, and other information on personal calendars; and accessing and downloading information from the Internet. Wireless telephones may also include global positioning system ("GPS") technology for determining the location of the device, and a wide variety of applications, also known as "apps," which may store the user's preferences and other data. Such apps may include Facebook, Twitter and other social media services.

b. IP Address: An Internet Protocol address (or simply "IP address") is a unique numeric address used by computers on the Internet. An IP address is a series of four numbers, each in the range 0-255, separated by periods (e.g., 121.56.97.178). Every computer or other electronic device, such as the SUBJECT DEVICES, that connects to the Internet must be assigned an IP address so that Internet traffic sent from and directed to that computer may be directed properly from its source to its destination. Most Internet service providers control a range of IP addresses. Some computers have static-that is, long-term- IP addresses, while other computers have dynamic - that is, frequently changed - IP addresses.

III. PROBABLE CAUSE TO SEARCH THE SUBJECT DEVICES

12. Based on my training and experience, I know that the SUBJECT DEVICES provide not only telephone and text message services, but can also be used to send and receive emails; access the Internet; track GPS data; take, store and share photographs, store and share contact information, and videos; and use a wide variety of apps, such as Facebook, Twitter and many others. In my training and experience, examining data stored on devices of this type can uncover, among other things, evidence that reveals or suggests who possessed or used the SUBJECT DEVICES.

13. Based on my training and experience, I know that those who participate conspiracies to interfere with commerce by threats of violence and illegal use and possession of firearms commonly communicate by means of multiple wireless devices such as the SUBJECT DEVICES. Those who commit such offenses may also retain evidence of their participation in such crimes on wireless devices through call records, text messages, emails or photographs.

14. The CI called and received calls, on at least seven occasions, from a cell phone the CI has observed in POTTER's possession. During these recorded phone calls, POTTER discussed details of POTTER's plans to commit the armed robbery of the warehouse. During at least two of these recorded phone calls, POTTER discussed the use of a co-conspirator named "JJ."

15. Based on my knowledge, training, and experience, I know that the SUBJECT DEVICES can store information for long periods of time. Similarly, things that have been viewed via the Internet are typically stored for some period of time on the

SUBJECT DEVICES. This information can sometimes be recovered with forensics tools. Based upon my training and experience, I know that instruments such as the SUBJECT DEVICES have capabilities that allow them to serve as wireless telephones and digital cameras, and can be used to send and receive electronic mail and text messages and to access the Internet and websites including Facebook and MySpace. In my training and experience, examining data stored on devices of this type can uncover, among other things, evidence that reveals or suggests who possessed or used the SUBJECT DEVICES.

16. Accordingly, and for the reasons set forth above in this affidavit, there is probable cause to believe there is information stored on the SUBJECT DEVICES pertaining to calls, text messages and/or electronic mail messages to and from POTTER, ROCHFORD, "JJ", and other potential co-conspirators concerning a conspiracy to interfere with commerce by threats of violence and the illegal use and possession of a firearm in or about and between March 2015 to April 2015.

## IV. TECHNICAL BACKGROUND

17. As further described in Attachment B, this application seeks permission to locate not only data that might serve as direct evidence of the crimes described on the warrants, but also for forensic electronic evidence that establishes how the SUBJECT DEVICES were used, the purpose of their use, who used them, and when. There is probable cause to believe that this forensic electronic evidence can be recovered from the SUBJECT DEVICES because:

a. Data on an electronic device can provide evidence of a file that was once on the device but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file). Virtual memory paging systems can leave traces of information on the device that show what tasks and processes were recently active. Web browsers, email programs, and instant messaging/"chat" programs store configuration information on the device that can reveal information such as online nicknames and passwords. Operating systems can record additional information, such as the attachment of peripherals, the attachment of USB flash storage devices or other external storage media, and the times the device was in use. Electronic devices can record information about the dates files were created and the sequence in which they were created.

b. Forensic evidence on an electronic device can also indicate who has used or controlled the device. This "user attribution" evidence is analogous to the search for "indicia of occupancy" while executing a search warrant at a residence. For example, registry information, configuration files, user profiles, email, email address books, instant messaging or chat logs, photographs, the presence or absence of malware, and correspondence (and the data associated with the foregoing, such as file creation and last-accessed dates) may be evidence of who used or controlled the electronic device at a relevant time.

c. A person with appropriate familiarity with how an electronic device works can, after examining this forensic evidence in its proper context, draw conclusions about how devices were used, the purpose of their use, who used them, and when.

d. The process of identifying the exact files, blocks, registry entries, logs, or other forms of forensic evidence on an electronic device that are necessary to draw an accurate conclusion is a dynamic process. While it is possible to specify in advance the records to be sought, such evidence is not always data that can be merely reviewed by a review team and passed along to investigators. Whether data stored on an electronic device is evidence may depend on other information stored on the device and the application of knowledge about how the device behaves. Therefore, contextual information necessary to understand other evidence also falls within the scope of the warrant.

e. Further, in finding user attribution evidence, sometimes it is necessary to establish that a particular thing is not present on an electronic device. For example, the presence or absence of counter-forensic programs or anti-virus programs (and associated data) may be relevant to establishing the user's intent.

18. Based on the foregoing, and consistent with Rule 41(e)(2)(B), the warrants I am applying for would permit the examination of the SUBJECT DEVICES consistent with the warrants. The examination may require authorities to employ techniques, including but not limited to computer-assisted scans of the entire medium, that might expose many parts of the devices to human inspection in order to determine whether it is evidence described by the warrants.

19. Because the warrants seek only permission to examine the SUBJECT DEVICES already in law enforcement's possession, the execution of these warrants does not involve intrusion into a physical location. Consequently, I submit there is reasonable cause for the Court to authorize execution of the warrants at any time in the day or night.

## VI. CONCLUSION

20. Based on my training and experience, and the facts as set forth in this affidavit, there is probable cause to believe that on the SUBJECT DEVICES there exists evidence of crimes. Accordingly, search warrants are requested.

21. It is respectfully requested that this Court issue an order sealing, until further order of the Court, all papers submitted in support of this application, including the application and search warrants. I believe that sealing these documents is necessary because the items and information to be seized are relevant to an ongoing investigation into the armed robbery conspiracy, and that not all of the targets of this investigation have been identified or arrested at this time. Based upon my training and experience, I have learned that criminals actively search for criminal affidavits and search warrants via the internet, and disseminate them to other criminals as they deem appropriate, e.g., by posting them publicly through online forums. Premature disclosure of the contents of this affidavit and related documents may have a significant and negative impact on the continuing investigation and may severely jeopardize its effectiveness.

WHEREFORE, your deponent respectfully requests that the requested search warrants be issued for the SUBJECT DEVICES.

IT IS FURTHER REQUESTED that all papers submitted in support of this application, including the application and search warrants, be sealed until further order of the Court.

Edward Martin
Special Agent
Bureau of Alcohol, Tobacco, Firearms and Explosives

Sworn to before me this
17 day of June, 2015

/s/ Gary R. Brown

THE HONORABLE GARY R. BROWN
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK

**ATTACHMENT A**
Property to Be Searched

The property to be searched is THE PREMISES KNOWN AND DESCRIBED AS:

(1) SAMSUNG MODEL SM-G386T1 CELLULAR TELEPHONE WITH "SW: G386T1UVU1ANH3; AND 354897062958195" TYPED ABOVE BARCODE ON THE DEVICE ("DEVICE 1"); and

(2) KYOCERA, MODEL S1360 CELLULAR TELEPHONE, WITH "DEC: 268 435 462 511 676 660" AND "HEX: A00 000 41B 22B F4" TYPED BELOW THE BARCODE ON THE DEVICE ("DEVICE 2")

hereinafter the "SUBJECT DEVICES." The search warrants authorize the forensic examination of the SUBJECT DEVICES for the purpose of identifying the electronically stored information described in Attachment B.

**ATTACHMENT B**

Particular Things to be Seized

All information obtained from the SUBJECT DEVICES will be maintained by the government for the purpose of authentication and any potential discovery obligations in any related prosecution. The information shall be reviewed by the government only for the purpose of identifying and seizing all information described below that constitutes fruits, evidence and instrumentalities of a conspiracy to interfere with commerce by threats of violence, in violation of Title 18, United States Code, Section 1951, and possession of a firearm, in violation of Title 18, United States Code, Section 924(c), including:

1. All records and information on the SUBJECT DEVICES described in Attachment A, including names and telephone numbers, as well as the contents of all call logs, contact lists, text messages, emails (including those sent, received, deleted and drafted), instant messages, photographs, videos, Facebook posts, Internet activity (including browser history, web page logs, and search terms entered by the user), and other electronic media constituting evidence, fruits or instrumentalities of a conspiracy to interfere with commerce by threats of violence, in violation of Title 18, United States Code, Section 1951 and possession of a firearm, in violation of Title 18, United States Code, Section 924(c);

2. Evidence of user attribution showing who used or owned the SUBJECT DEVICES at the time the things described in this warrant were created, edited, or deleted, such as, for example, logs, phonebooks, saved usernames and passwords, documents, and browsing history;

3. Evidence of software that would allow others to control the SUBJECT DEVICES, such as viruses, Trojan horses, and other forms of malicious software, as well as evidence of the presence or absence of security software designed to detect malicious software;

4. Evidence of the lack of such malicious software;

5. Evidence of the attachment to the SUBJECT DEVICES of other storage devices or similar containers for electronic evidence;

6. Evidence of counter-forensic programs (and associated data) that are designed to eliminate data from the SUBJECT DEVICES;

7. Evidence of the times the SUBJECT DEVICES were used;

8. Passwords, encryption keys, and other access devices that may be necessary to access the SUBJECT DEVICES; and

9. Contextual information necessary to understand the evidence described in this attachment, all of which constitute evidence, fruits and instrumentalities of a

conspiracy to interfere with commerce by threats of violence, in violation of Title 18, United States Code, Section 1951 and possession of a firearm, in violation of Title 18, United States Code, Section 924(c).

As used above, the terms "records" and "information" include all of the foregoing items of evidence in whatever form and by whatever means they may have been created or stored, including any form of computer or electronic storage (such as flash memory or other media that can store data) and any photographic form.